

Message Text

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ORIGIN EB-08

INFO OCT-01 EUR-12 EA-07 IO-13 ISO-00 TRSE-00 STR-04 L-03
COME-00 AGRE-00 CEA-01 CIAE-00 DODE-00 FRB-03 H-01
INR-07 INT-05 LAB-04 NSAE-00 NSC-05 PA-01 AID-05
CIEP-01 SS-15 ITC-01 PRS-01 SP-02 OMB-01 NSCE-00
SSO-00 USIE-00 INRE-00 FEA-01 /102 R

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APPROVED BY EB/OT/STA:JSPIRO
TREASURY:POSUCHMAN
EB/OT:WGBARRACLOUGH
STR:AWOLFF
EA/J:DSMITH
L/EB:CROH
COMMERCE:BASCHER(INFO)
-----290051Z 100619 /70

O R 290002Z JAN 77
FM SECSTATE WASHDC
TO AMEMBASSY TOKYO IMMEDIATE
INFO USMISSION EC BRUSSELS
USMISSION OECD PARIS
USMISSION GENEVA
USDEL MTN GENEVA

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TOKYO PASS TREASURY ASSISTANT SECRETARY BERGSTEN

E.O. 11652:N/A

TAGS:ETRD, JA

SUBJECT:STATUS OF ZENITH CASE

REF: (A) TOKYO 225; (B) TOKYO 18030 12/8/76
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1. ON JANUARY 26, TREASURY DEPUTY ASSISTANT SECRETARY
SUCHMAN AND REPRESENTATIVES OF STATE AND STR MET WITH
MINISTER FUKADA AND FIRST SECRETARY YOKOYAMA OF THE
JAPANESE EMBASSY TO PROVIDE THE JAPANESE EMBASSY WITH A
STATUS REPORT ON THE ZENITH CASE. THE PURPOSE OF THE
MEETING WAS ALSO TO MAKE IT CLEAR TO THE JAPANESE OFFICIALS

THAT WHILE THE USG WOULD DO ALL IT COULD TO EXPEDITE THE CASE SHOULD WE LOSE IN THE CUSTOMS COURT AND TO HAVE IT REVERSED ON APPEAL, THE OPTIONS AVAILABLE TO PREVENT SUSPENSION OF LIQUIDATION UNTIL A FINAL COURT DECISION IS OBTAINED ARE NOT PROMISING.

2. WE TOLD FUKADA THAT THE CUSTOMS COURT CAN HAND DOWN ITS DECISION AT ANY TIME, BUT WE WOULD EXPECT IT BEFORE THE END OF MARCH. WHILE WE COULD NOT PREDICT THE TIMING OF THE DECISION OF THE COURT OF CUSTOMS AND PATENT APPEALS (CCPA) AND THE SUPREME COURT, IF WE WERE REQUIRED

TO APPEAL BECAUSE OF AN ADVERSE CUSTOMS COURT DECISION, WE WOULD HOPE FOR A CCPA DECISION BY MID-1977 AND A SUPREME COURT DECISION BY LATE 1977 OR EARLY 1978. THE TIMING OF APPEALS COURT DECISIONS DEPENDS, OF COURSE, ON WHEN THE CUSTOMS COURT MAKES ITS DECISION. WE ALSO POINTED OUT THAT IF THE CCPA REVERSES THE ADVERSE DECISION OF THE CUSTOMS COURT, THERE IS A STRONG POSSIBILITY THAT SUPREME COURT COULD BE PERSUADED NOT TO HEAR AN APPEAL FROM ZENITH MAKING THE CCPA DECISION FINAL AND TERMINATING THE SUSPENSION OF LIQUIDATION AT AN EVEN EARLIER POINT.

3. SUCHMAN TOLD FUKADA THAT THE AGENCIES HAD LOOKED LONG AND HARD AT OPTIONS TO PREVENT THE SUSPENSION OF LIQUIDATION REQUIRED BY STATUTE UPON AN ADVERSE DECISION OF THE CUSTOMS COURT.

(A) LEGISLATION -- ALTHOUGH WE HAVE NOT RULED OUT GOING LIMITED OFFICIAL USE

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TO THE CONGRESS FOR LEGISLATION, THIS OPTION IS REplete WITH PROBLEMS: IT COULD OPEN UP A LEGISLATIVE DEBATE ON TRADE WITH JAPAN; THERE COULD BE UNACCEPTABLE COSTS IMPOSED ON SUCH LEGISLATION; THERE IS LITTLE INTEREST IN CONGRESS FOR SUCH LEGISLATION WHILE THE CASE IS BEING PURSUED IN THE COURTS.

(B) A WAIVER OF THE COUNTERVAILING DUTIES UNDER SEC. 303(D) OF THE COUNTERVAILING DUTY LAW -- IN ADDITION TO SERIOUS LEGAL PROBLEMS AND THE BUILT IN CONGRESSIONAL OVERRIDE, RESORT TO THE WAIVER COULD RESULT IN THE CCPA DECIDING AGAINST ENTERTAINING AN APPEAL BECAUSE THE WAIVER REQUIRES A FINDING OF A BOUNTY OR GRANT BY THE SECRETARY OF THE TREASURY AND THE CCPA COULD HOLD THE CASE TO BE MOOT.

(C) A STAY OF THE SUSPENSION OF LIQUIDATION PENDING APPEAL -- ALTHOUGH WE ARE STILL LOOKING AT THIS POSSIBILITY, THE FUNDAMENTAL PROBLEMS ARE (1) THAT THE

SUSPENSION OF LIQUIDATION IS A SELF-EXECUTING STATUTORY REQUIREMENT, AND (2) THE CUSTOMS COURT WILL PROBABLY NOT ORDER ANYTHING BUT ONLY STATE THAT THE SECRETARY OF THE TREASURY WAS IN ERROR IN NOT FINDING A BOUNTY OR GRANT. IN SHORT, THE COURT WOULD HAVE TO STAY THE EXECUTION OF THE LAW WHICH IS MOST UNLIKELY.

4. ALAN WOLFF OF STR MENTIONED THAT THE TRADE ACTION SECTION 102 MULTILATERAL AGREEMENT POSSIBILITY DISCUSSED IN TOKYO (SEE REFTEL B) DOES NOT SEEM TO BE A HOPEFUL APPROACH BECAUSE A POSSIBLE BILATERAL AGREEMENT WITH JAPAN ON TAX PRACTICES WOULD NOT SATISFY CONGRESS WHICH WOULD BE LOOKING FOR A MULTILATERAL SOLUTION TO TAX PRACTICE PROBLEMS.

5. SUCHMAN SAID THAT WE MAY HAVE TO LIVE WITH SUSPENSION OF LIQUIDATION DURING THE PERIOD OF APPEAL. HE ASSURED FUKADA THAT WE ARE OPTIMISTIC ABOUT WINNING LIMITED OFFICIAL USE

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AN APPEAL AND WOULD MOVE AS FAST AS POSSIBLE TO OBTAIN REVERSAL OF A CUSTOMS COURT ADVERSE DECISION. HE SAID TREASURY IS STILL ATTEMPTING TO DETERMINE THE AMOUNT OF TRADE THAT WOULD BE INVOLVED AND NOTED THAT APPRAISEMENT OF DUTIES ON COLOR TV'S, WHICH IS ONE THIRD OF THE TRADE IS CURRENTLY BEING WITHHELD UNDER A 1971 ANTIDUMPING DECISION AND UNCERTAINTY ON CONTINGENT LIABILITY IN THIS SECTOR ALREADY EXISTS. SUCHMAN SAID THAT TREASURY HAD DETERMINED THAT BONDING COSTS DURING SUSPENSION OF LIQUIDATION WOULD NOT BE COSTLY IN TERMS OF THE TRADE INVOLVED BUT ADMITTED THAT THE REAL PROBLEM WAS THE UNCERTAINTY OF IMPORTERS REGARDING THEIR EVENTUAL TARIFF LIABILITY.

6. IN RESPONSE TO QUESTIONS OF JAPANESE OFFICIALS, SUCHMAN NOTED THAT SUSPENSION OF LIQUIDATION WILL BEGIN UPON PUBLICATION OF THE CUSTOMS COURT DECISION IN THE CUSTOMS BULLETIN. THIS WILL OCCUR APPROXIMATELY THREE WEEKS AFTER THE CUSTOMS COURT DECISION SHOULD IT BE ADVERSE.

7. YOKOYAMA ASKED ABOUT THE DISPOSITION OF COUNTERVAIL CASES BROUGHT BY OTHER U.S. INDUSTRIES FOLLOWING A CUSTOMS COURT DECISION. SUCHMAN SAID THAT IF THE ISSUES WERE DIFFERENT THAN THOSE IN ZENITH, TREASURY COULD FOLLOW NORMAL STATUTORY PROCEDURES WHICH ALLOWS TREASURY ONE YEAR FROM FILING OF A PETITION BEFORE IT MUST MAKE A DECISION. IF THE PETITION IS BASED SOLELY ON THE JAPANESE COMMODITY TAX, TREASURY WOULD FIND, AS IT DID IN ZENITH, NO BOUNTY OR GRANT. THE PETITIONER COULD APPEAL TO THE CUSTOMS COURT FOR A SUMMARY JUDGMENT. THE USG WOULD

MOVE TO SUSPEND THE CASE UNTIL THE FINAL DECISION IN
ZENITH AND ALTHOUGH WE ARE NOT SURE WE WOULD BE UPHELD,
WE BELIEVE WE WOULD BE.

8. THROUGHOUT THE MEETING WE ATTEMPTED TO EXPLAIN TO
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FUKADA THAT WE WANTED HIS GOVERNMENT TO UNDERSTAND THAT
WE RECOGNIZED THAT AN ADVERSE DECISION WOULD PUT US OUT
OF STEP WITH INTERNATIONAL LAW, THAT THE HIGHEST
OFFICIALS IN THE USG REALIZED THE IMPORTANCE OF THE CASE,
AND THAT WE WERE DOING ALL WE COULD TO OBTAIN A FAVORABLE
DECISION IN THE COURTS. FUKADA SAID THAT ALTHOUGH THE
NEWS WAS NOT GOOD, HE APPRECIATED BEING TOLD OF THE
SITUATION. HE SAID HE DID NOT KNOW HOW TOKYO WOULD
REACT WHEN THEY LEARNED THAT LITTLE COULD BE DONE TO
ALLEVIATE THE SITUATION. SUCHMAN RESPONDED THAT IF THE

CASE GOES AGAINST THE GOVERNMENT, WE WOULD BE PREPARED
TO PROVIDE EXPLANATIONS EITHER HERE OR IN TOKYO.

9. DEPARTMENT IS PROVIDING FURTHER BACKGROUND IN
SEPTTEL.
VANCE

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Message Attributes

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Capture Date: 01-Jan-1994 12:00:00 am
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Disposition Case Number: n/a
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Secure: OPEN
Status: NATIVE
Subject: STATUS OF ZENITH CASE
TAGS: ETRD, JA, ZENITH
To: TOKYO
Type: TE
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